

**COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §§ 1983**

Name MILLS KENNETH W  
 (Last) (First) (Initial)

Prisoner Number 779095

Institutional Address SALINAS VALLEY STATE PRISON - 125 ALBER  
ST. SEBASTIA, CA. - 93960-1050

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

KENNETH WAYNE MILLS  
 (Enter the full name of plaintiff in this action.)

vs.

BOARD OF PRISON TERMS ET AL.  
CALIFORNIA DEPARTMENT OF CORRECTIONS

"N/A"

"N/A"

(Enter the full name of the defendant(s) in this action)

Case No. \_\_\_\_\_  
 (To be provided by the Clerk of Court)

**COMPLAINT UNDER THE  
 CIVIL RIGHTS ACT,  
 Title 42 U.S.C § 1983**

[All questions on this complaint form must be answered in order for your action to proceed..]

**I. Exhaustion of Administrative Remedies.**

[Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.]

A. Place of present confinement SALINAS VALLEY STATE PRISON

B. Is there a grievance procedure in this institution?

YES (X) NO ( )

C. Did you present the facts in your complaint for review through the grievance procedure?

YES ( ) NO (X)

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue a certain level of appeal, explain why.

"N/A"

(-1-058)

COMPLAINT

1 1. Informal appeal \_\_\_\_\_

2 2. First formal level \_\_\_\_\_

3 3. Second formal level \_\_\_\_\_

4 4. Third formal level \_\_\_\_\_

5  
6  
7  
8  
9  
10  
11  
12  
13 E. Is the last level to which you appealed the highest level of appeal available to  
14 you?

15 ~~YES ( )~~ ~~NO ( )~~

16 F. If you did not present your claim for review through the grievance procedure,  
17 explain why. "THIS IS A COURT/LAWFUL ACTION!"

18  
19  
20 II. Parties.

21 A. Write your name and your present address. Do the same for additional plaintiffs,  
22 if any.

23 KENNETH WAYNE MILLER - 719095 - SALINAS VALLEY STATE  
24 PRISON - 125 ALDER STREET - SOLEMA, CA - 93960-1050  
25 "N/A"

26 B. Write the full name of each defendant, his or her official position, and his or her  
27 place of employment.

28 "CALIFORNIA BOARD OF PRISON TERMS ET. AL."

30543 8183456

CALIFORNIA DEPARTMENT OF CORRECTIONS -

III. Statement of Claim.

State here as briefly as possible the facts of your case. Be sure to describe how each defendant is involved and to include dates, when possible. Do not give any legal arguments or cite any cases or statutes. If you have more than one claim, each claim should be set forth in a separate numbered paragraph.

I THE "APPELLATE" HEREBY BRING THIS ACTION AND HAVE  
 ALL EVENTUAL HEARING ON THIS MATTER TO THE DISTRICT  
 COURTS ON THE "VERY PREJUDICIAL" "INJURIOUS" "ACTIONS OF  
 DEFENDANTS" THAT "COST ME TIME OUT OF MY LIFE" IVE "LOST  
 EVERYTHING I OWNED" BECAUSE OF "DEFENDANTS AND PUBLIC  
 DEFENDER ELENA D'ALBUQUERQUE." ON 01-28-01 PLAINTIFF "HAD  
 A "PROBATION REVOCATION HEARING" IN "SAND COUNTY" CITY OF  
 VALLEJO "SUPERIOR COURT OF CALIF." JUDGE ALLEN P. CARTER "PRE-  
 SENDING FOR CASE NO. VER147775." JUDGE CARTER RULED "ALLEGATIONS  
 THAT DEFENDANT VIOLATED A TERM OF PROBATION" WAS "DIS-  
 MISSED." EX-WIFE WOULD TESTIFY AGAINST ME I "WASNT RELEASED."  
 I HAD "NO LAWFUL SPEEDY TRIAL" I WAS "INSTEAD SENT TO PRI-  
 SON" FOR "CASE NO. VER147775" WHICH I RECEIVED "PRISON #78095."  
 IV. Relief. "WHICH I HAVE TO THIS DATE"

Your complaint cannot go forward unless you request specific relief. State briefly exactly what you want the court to do for you. Make no legal arguments; cite no cases or statutes.

I WANT THE "COURT TO HOLD A HEARING" ON THE  
 "REASON I WANT ALLOWED" A "SPEEDY TRIAL" FOR CRIM.  
 CASE NO. VER147775, AND TO BE "COMPENSATED"

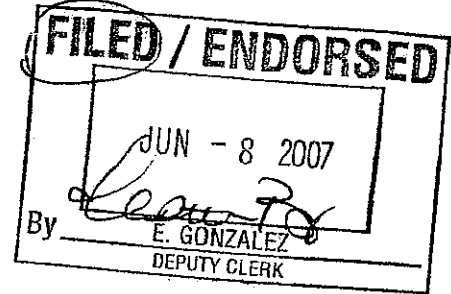
1 FOR EVERY DAY I'VE BEEN ILLEGALLY IMPRISONED,  
 2 ALSO I WANT THE COURT TO RELEASE ME FROM PRISON  
 3 AND TO TAKE BACK PRISON NO. 7190957 IVE HAD FOR 16 YEARS  
 4 (SEE ATTACHED STATES SUMMARY & DENIED HABEAS CORPUS COCUNT OF APPEAL  
 5 REQUEST TO BE PROVIDED FOR RELIEF ASSEMBLY BILL 1302 (COMPENSATION)  
 6 I declare under penalty of perjury that the foregoing is true and correct.

7 Signed this \_\_\_\_\_ day of OCTOBER, 2007

8  
 9 Kennett Mill

10 (Plaintiff's signature)

*60F33*  
*3193456*  
*50F43*



## SUPERIOR COURT OF CALIFORNIA

## COUNTY OF SACRAMENTO

In re

Kenneth Mills,

On Habeas Corpus.

07F03733

No. 07F03696 Dept. 41

ORDER TRANSFERRING

PETITION

The petition of Kenneth Mills for a writ of habeas corpus filed in this court on April 11, 2007, alleges that he has failed to receive effective counsel regarding certain court proceedings. Good cause appearing,

IT IS HEREBY ORDERED that the petition is transferred to the court of the county where petitioner was sentenced, the Superior Court in and for the County of Los Angeles, pursuant to Rule 4.552(b) of the California Rules of Court and *Griggs v. Superior Court* (1976) 16 Cal.3d 341.

DATED:

June 8, 2007

*Emily E. Vasquez*  
 JUDGE OF THE SUPERIOR COURT

EMILY E. VASQUEZ



*Received July 4 1975 2007*

*190F27* *"40F11"*

COURT OF APPEAL, FIRST APPELLATE DISTRICT  
350 MCALLISTER STREET  
SAN FRANCISCO, CA 94102  
DIVISION 1

COPY

In re KENNETH MILLS on Habeas Corpus.

A115580

Solano County No. VCR147775

BY THE COURT:

The petition for writ of habeas corpus is denied.

The justices participating in this matter were:

Presiding Justice Marchiano, Justice Swager and Justice Margulies

FILED

OCT 26 2006

Court of Appeal - First App. Dist.  
DIANA HERBERT

By \_\_\_\_\_  
DEPUTY

386 Days For their  
HABEAS corpus to be  
Response, for  
Today's DATE  
September 25th 2007

Due Process Violated  
Kenneth Mills  
THROE

Date: OCT 26 2006

MARCHIANO, P.J.

P.J.

THIS writ signed by a Natural person NO  
written as LAW DEMAND RECEIVED this 09-05-07  
Kenneth Mills Violation of Due process  
OF HABEAS corpus petition  
(60) DAYS to HAVE Response

(5 of 8)

Mills



Name KENNETH WAYNE MILLS  
 Address SALINAS VALLEY STATE PRISON CD-411311  
"125 ALDER STREET"  
SOLICIA, CA. 93960-1050  
 CDC or ID Number T79095

"CALIFORNIA SUPREME COURT"  
350 MALLISTER ST. S.F. CA. 94102  
 (Court)

"KENNETH WAYNE MILLS"  
 Petitioner  
 vs.  
"SUPERIOR COURT of CA. JUDGE LYNTHIA"  
 Respondent: RATVIS - NORWALK COURTHOUSE

PETITION FOR WRIT OF HABEAS CORPUS

No. \_\_\_\_\_  
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under Rule 60 of the California Rules of Court [as amended effective January 1, 2005]. Subsequent amendments to Rule 60 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

(148) PAGES TOTAL  
 PROOF OF SERVICE ENCLOSED (BY MAIL)

## This petition concerns:

- ☒ A conviction ☐ Parole
- ☐ A sentence ☐ Credits
- ☐ Jail or prison conditions ☐ Prison discipline
- ☐ Other (specify):

1. Your name: "KENNETH WAYNE MILLS"
2. Where are you incarcerated? "SALINAS VALLEY STATE PRISON" (D-4/C3/L1)
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

"MAYHEM - ASSAULT WITH DEADLY WEAPON CAUSING INJURIES"  
"N/A"

- b. Penal or other code sections:

"§§ 205-245(a)"

- c. Name and location of sentencing or committing court:

"SUPERIOR COURT OF CALIFORNIA, -"  
"COUNTY OF LOS ANGELES - NORWALK COURT HOUSE"

- d. Case number:

"VAD08677"

- e. Date convicted or committed:

"JUNE 06TH 2006"

- f. Date sentenced:

"AUGUST 28TH 2006"

- g. Length of sentence:

"LIFE + 16 YEARS"

- h. When do you expect to be released?

"NOT KNOWN"

- i. Were you represented by counsel in the trial court? ☐ Yes. ☒ No. If yes, state the attorney's name and address:

"PROPRIA PERSONA (PRO-PER) (DEFENDING ONESELF)"  
"N/A"

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial



## 6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

"THE TRIAL COURT OVER STEPPED BOUNDRIES"  
 "SPEEDY TRIAL VIOLATIONS" (60 DAYS VIOLATION)  
 "SUPERIOR COURT JUDGE LARRY KNAPP UNLAWFULLY STOPPED COURT PROCEEDINGS FOR PEN. C SECTION §1368"

## a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

"PETITIONER IS SEEKING RELIEF FROM PROCEDURE DEFAULT" AND "PETITIONER IS CLAIMING SERIOUS INJURIES" (MENTAL & PHYSICAL) DUE TO "ILLEGAL INCARCERATION" THATS "VERY PREJUDICIAL TO APPEALATE" (SPEEDY TRIAL VIOLATIONS)  
 I "MADE APPEARANCE" IN "NORWALK SUPERIOR COURTHOUSE" WITH "SUPERIOR COURT JUDGE" (of CALIF.) "LARRY KNAPP" PRESIDING "OVER MY" "CRIMINAL TRIAL" (CASE NO. VAD00677) "SEPTEMBER 66 2006." (I APPEARED UNDER PROPRIA-PERSONA) (MY "CONSTITUTIONAL RIGHTS TO SPEEDY TRIAL BEGAN" MY "RIGHT TO 60 DAYS TO SPEEDY TRIAL" BEGAN.

I "MADE APPEARANCE" TO "NORWALK COURTHOUSE" (NOVEMBER 62 NO 2006) WITH "PRESIDING JUDGE" "LARRY KNAPP." AT THIS TIME THE "DEPUTY DISTRICT ATTORNEY" STATED: "I DON'T THINK HE'S COMPETENT JUDGE." (AT THIS TIME APPELLANT "MADE NO UNLAWFUL ACTIONS" TO HAVE "TRIAL STOPPED" JUDGE LARRY KNAPP HAULTED PROCEEDINGS FOR PEN. C §1368.

## b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

#1. FEDERAL CONSTITUTIONAL ISSUE - REVIEW (PETITION)  
 #2. CONSTITUTIONAL RIGHTS TO SPEEDY TRIAL (60-DAYS)  
 #3. CONSTITUTION OF THE UNITED STATES - AMENDMENTS I-VI-VIII  
 #4. XIV; IMMUNITY OF STATE HOSPITAL VIOLENT ACT;  
 #5. C.R.C. RULE #29 - RULE #4.100 - RULE NO. 4.110

## 7. Ground 2 or Ground (if applicable):

THE TRIAL COURT SUPERIOR COURT of CA. JUDGE CYNTHIA RAYVIS VIOLATED MY CONSTITUTIONAL RIGHT TO SPEEDY TRIAL: FEBRUARY 08TH 2006 I LOGGED A PEN. C § 17D.6 (Disqualified) AGAINST AGAINST SUPERIOR COURT (of CA.) JUDGE LARRY KNOPP NORWALK COURTHOUSE

## a. Supporting facts:

PETITIONER IS CLAIMING SERIOUS UNLAWFUL ACTIONS ~~AGAINST~~ SUPERIOR COURT JUDGE CYNTHIA RAYVIS THATS VERY PREJUDICIAL TO APPELLANT AND UNLAWFULLY IMPRISONED APPELLATE.

ON FEBRUARY 08TH 2006 APPELLATE MADE APPEARANCE IN THE SUPERIOR COURT OF CALIFORNIA - COUNTY OF LOS ANGELES - NORWALK COURT HOUSE - SUPERIOR COURT JUDGE CYNTHIA RAYVIS PRESTAINING OVER MY CRIMINAL CASE NO. VA088677.

APPELLANT HAS AWAITED FIFTY SEVEN (57) DAYS FOR CONSTITUTIONAL (60) DAYS SPEEDY TRIAL (APPELLATE WAS APPEARING UNDER PROPTA - PERSONA. (PRO PER - DEFENDING ONES SELF IN CRIMINAL TRIAL) APPELLATE HAS BEEN TRANSFERRED FROM SUPERIOR COURT OF CA. JUDGE LARRY KNOPP COURT ROOM FOR PREJUDICIAL ACTIONS COMMITTED AGAINST APPELLATE. APPELLATE FILED A PEN. C SECTION 817D.6 AND UNQUALIFIED SUPERIOR COURT JUDGE LARRY KNOPP FROM HEARING / PRESTAINING OVER MY CRIMINAL CASE NO. VA088677.

APPELLATE WAS SENT NEXT DOOR TO SUPERIOR COURT JUDGE (of CA.) CYNTHIA RAYVIS TO CONTINUE MY CRIMINAL TRIAL (VA088677) INSTEAD OF CONTINUING FROM 57 OF 60 MY CRIM. TRIAL WAS STARTED A NEW 10-601.

## b. Supporting cases, rules, or other authority:

RIGHT TO SPEEDY TRIAL SEE CRIMINAL LAWS § 2080 ET. SEQ. AND [FN2] IN RE YUNG (1908) 7 CAL. APP. 772, 76 P.249  
4267 CALIFORNIA JURISPRUDENCE 3d CRIMINAL LAW: POST-TRIAL PROCEEDINGS:

22C CAL. JUR. 3d CRIMINAL LAW: POST TRIAL PROCEEDINGS § 907; CAL. APP. 3d 779, 110 CAL APP. 4th 492. PEOPLE V. SMITH (2003)

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes ☐ No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

"HAVENT HEARD"

b. Result

HAVENT HEARD

c. Date of decision:

HAVENT HEARD

d. Case number or citation of opinion, if known:

B193456

e. Issues raised: (1)

ILLEGAL IMPRISONMENT / P.C. § 1368a Violation

(2)

"NOT GIVEN ATTORNEY FOR COMPETENCY HEARING RE § 1368

(3)

"YV/A"

f. Were you represented by counsel on appeal? ☒ Yes ☒ No If yes, state the attorney's name and address, if known:

\$ SALLY PATRONE [BRATEVICH] (SBN 161863)

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:

a. Result

b. Date of decision:

c. Case number or citation of opinion, if known:

d. Issues raised: (1)

(2)

(3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

APPEAL ATTORNEY (SALLY P. BRATEVICH) REFUSES TO RAISE VIOLATIONS OF SPEEDY TRIAL (60) DAYS

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

THIS A COURT/APPEAL ISSUE NOT A ADMINISTRATIVE ISSUE!

b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No.

Attach documents that show you have exhausted your administrative remedies.



12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: STATE BAR OF CALIFORNIA  
 (2) Nature of proceeding (for example, "habeas corpus petition"): COMPLAINT (MOTIONS & PETITIONS)  
 (3) Issues raised: (a) (60) DAY SPEEDY TRIAL VIOLATIONS  
 (b) ATTORNEY NOT GIVEN FOR PIE §1368 HEARING  
 (4) Result (Attach order or explain why unavailable): NOT KNOWN - ON GOING  
 (5) Date of decision: "N/A"
- b. (1) Name of court: "N/A"  
 (2) Nature of proceeding: "N/A"  
 (3) Issues raised: (a) "N/A"  
 (b) "N/A"  
 (4) Result (Attach order or explain why unavailable): Acceding  
 (5) Date of decision: None

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

"N/A"  
"N/A"

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

APPEAL ATTORNEY SALLY PATRONE BRAJEVICH  
REFUSES TO PLACE IN CRIM. APPEAL (B193456) SPEEDY  
TRIAL VIOLATIONS

16. Are you presently represented by counsel? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

SALLY PATRONE BRAJEVICH - 1379 MARK  
WESTERN DRIVE #16 - SAN PEDRO CALIF. 90732

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

"N/A"  
"N/A"

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

SUPERIOR COURT OF CALIFORNIA - NORWALK SUPERIOR  
COURT - JUDGES LARRY KNEPP & CYNTHIA RAYUS COMMITTED  
VIOLATIONS AGAINST ME

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 10-2007

[Signature]  
 (SIGNATURE OF PETITIONER)

"KENNETH W. MILLS"  
 "SALINAS VALLEY STATE PRISON D-4/131L"  
 "SOLENO, CALIFORNIA"  
 "93960-1050"

"CALIFORNIA SUPREME COURT"  
 "350 McALLISTER ST. S.F. CA. 94102"

PETITION FOR WRIT OF HABEAS CORPUS

|   |
|---|
| KENNETH W. MILLS  |
| PETITIONER  |
| VS.   |
| SUPERIOR COURT OF CA. JUDGE<br>CYNTHIA RAYNES-NORWALK COURT HOUSE |
| RESPONDENT  |

N.D.

(TO BE SUPPLIED BY CLERK OF COURT)  
 REQUEST FOR APPOINTMENT OF COUNSEL AND  
 DECLARATION OF INDIGENCY - ON HABEAS  
 CORPUS -

"I KENNETH MILLS DECLARE THAT I AM THE PETITIONER TO  
 THE ABOVE-REFERENCED MATTER, THAT I AM INCARCERATED AT  
 "SALINAS VALLEY STATE PRISON D-4/131L, AND THAT I AM INDIGENT  
 AND UNABLE TO AFFORD COUNSEL. MY TOTAL ASSETS ARE  
 \$ 0 AND MY INCOME IS \$ 0 PER MONTH."

"I HEREBY REQUEST THAT COUNSEL BE APPOINTED  
 IN THIS MATTER SO MY INTERESTS MAY BE PROTECTED BY  
 THE PROFESSIONAL ASSISTANCE REQUIRED. IN ADDITION, WHEN  
 A COURT ISSUES AN ORDER TO "SHOW CAUSE," COUNSEL  
 MUST BE APPOINTED FOR AN INDIGENT PRISONER WHO RE-  
 QUESTS COUNSEL." (CALIFORNIA RULES OF COURT, RULE NO.  
 4, 351(C)(2).)

I AFFIRM UNDER THE PENALTY OF PERJURY THE FOREGOING IS TRUE &  
 CORRECT & THAT DECLARATION WAS EXECUTED ON OCT 2007  
 Kenneth Mills T-9085 D-4/131L

High Desert State Prison  
P.O. Box 750  
Susanville, CA 96127-0750

03/19/02

SOLANO COUNTY SUPERIOR COURT  
HALL OF JUSTICE, NORTH WING  
600 UNION AVENUE  
FAIRFIELD, CA 94533

RE: MILLS, KENNETH  
CDC#: T-19095  
Case #: VCR147775  
Sentence Date: 06/01/01

Date of Arrest:  
Booking #:  
Report #:  
Charge:

Dear Sir:

The above identified Subject has been sentenced to the California Department of Corrections from your County. We have not received the following documents/information on the above case. It is of the utmost importance these documents/information are received to properly record the commitment.

- ( ) INFORMATION
- ( ) PROBATION OFFICERS REPORT
- ( ) CERTIFIED COPY OF ABSTRACT OF JUDGMENT - COMMITMENT
- ( ) TRANSCRIPT OF PROCEEDINGS AT TIME OF SENTENCING
- (XXX) MINUTE ORDER - CERTIFIED
- ( ) ARREST REPORT/INVESTIGATIVE REPORT

*CDC NEVER RECEIVED DOCUMENTS THAT WAS TO ACCOMPANY ME TO PRISON. STAYS ILLEGAL IMPRISONMENT WITH T8095*

Your cooperation in this matter is greatly appreciated.

Sincerely,

D. L. RUNNELS  
WARDEN

*L. Kennedy*  
D. SADER

Correctional Case Records Manager  
(530) 251-5100 EXT. 5574

*THIS WAS TO ACCOMPANY ME TO PRISON BUT IT DIDNT. ILLEGALLY IMPRISONED*

*06/2001 PRISON T8095 - CASE NO. VCR147775 WHICH WAS DISMISSED ON 01-28-01 BY SUPERIOR COURT JUDGE ALAN CARTER AT PROBATION REVOCATION HEARING.*

*Kenneth Mills T8095*

cc: Central File  
Inmate

*(6088)*

RECEIVED  
SOLANO COUNTY COURTS  
02 MAR 22 PM 1:42  
COUNTY OF SOLANO



B193456  
14084B

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION EIGHT

---

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

v.

**KENNETH W. MILLS,**

Defendant and Appellant.

---

)  
)  
) Court of Appeal  
) No. B193456  
)  
) Los Angeles County  
) Superior Court  
) No. VA088677  
)  
)

APPEAL FROM THE JUDGMENT OF  
THE SUPERIOR COURT OF LOS ANGELES COUNTY  
THE HONORABLE LARRY S. KNUPP AND CYNTHIA RAYVIS JUDGES

---

**MOTION TO AUGMENT THE RECORD ON APPEAL**

(60871)

SALLY P. BRAJEVICH  
1379 Park Western Drive, # 316  
San Pedro, California 90732  
Telephone: (310) 832-9385  
Fax: (310) 832-9684  
State Bar No. 161863

Attorney for Appellant  
KENNETH W. MILLS

B193456  
150F43

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION EIGHT

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

B193456

v.

**KENNETH WAYNE MILLS,**

Defendant and Appellant.

**RESPONDENT'S REQUEST FOR PERMISSION  
TO FILE OVERSIZED SUPPLEMENTAL LETTER BRIEF**

TO THE HONORABLE PRESIDING JUSTICE, AND TO THE  
HONORABLE ASSOCIATES JUSTICES OF THE CALIFORNIA COURT  
OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION EIGHT:

Respondent hereby requests permission to file an oversized  
supplemental letter brief exceeding 2,800 words within the meaning of Rule  
8.520(d)(2) of the California Rules of Court.

/

/

/

B193456  
160743

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION EIGHT

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

B193456

v.

**KENNETH WAYNE MILLS,**

Defendant and Appellant.

**RESPONDENT'S REQUEST FOR PERMISSION**  
**TO FILE OVERSIZED SUPPLEMENTAL LETTER BRIEF**

TO THE HONORABLE PRESIDING JUSTICE, AND TO THE  
HONORABLE ASSOCIATES JUSTICES OF THE CALIFORNIA COURT  
OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION EIGHT:

Respondent hereby requests permission to file an oversized  
supplemental letter brief exceeding 2,800 words within the meaning of Rule  
8.520(d)(2) of the California Rules of Court.

/

/

/

*B193456*  
*170F43*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION EIGHT

|   |                           |                      |
|---|---------------------------|----------------------|
|   |                           | )                    |
| <b>THE PEOPLE OF THE STATE OF CALIFORNIA,</b> |                           | )                    |
|   |                           | ) Court of Appeal    |
|   | Plaintiff and Respondent, | ) No. B193456        |
| v.  |                           | )                    |
|   |                           | ) Los Angeles County |
| <b>KENNETH W. MILLS,</b>                      |                           | ) Superior Court     |
|   |                           | ) No. VA088677       |
|   | Defendant and Appellant.  | )                    |
|   |                           | )                    |

I.

**MOTION TO AUGMENT THE  
RECORD ON APPEAL**

Appellant respectfully requests pursuant rules 8.155 and 8.324 of the California Rules of Court for an order augmenting the record on appeal as specified herein. Appellate counsel has made no previous requests for augmentation.

Appellant requests the following: *supposed to be November 11, 2005* *with No Trans the date*

*No Report*  
*RTENS Trans*  
*empt the date*  
*Mills B193456*  
Reporter's Transcript of November 11, 2005, Southeast Dept. SES, Judge Larry S. Knupp, Reporter Linda Peralta, where the prosecutor declared a doubt as to appellant's mental competency pursuant to Penal Code section 1368, and criminal proceedings were suspended;

- 2) Reporter's Transcript of December 28, 2005, Southeast Dept. SES, Judge Larry S. Knupp, Reporter Linda Peralta, where the competency hearing pursuant to Penal Code section 1368, was continued;
- 3) Reporter's Transcript of February 8, 2006, Southeast Dept. SES, Judge Larry S. Knupp, Reporter Linda Peralta, where the trial court granted appellant's

*(70F7)*

*(11/05/22)*

B193456  
18x43

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION EIGHT

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

B193456

v.

**KENNETH WAYNE MILLS,**

Defendant and Appellant.

**RESPONDENT'S REQUEST FOR PERMISSION  
TO FILE OVERSIZED SUPPLEMENTAL LETTER BRIEF**

TO THE HONORABLE PRESIDING JUSTICE, AND TO THE  
HONORABLE ASSOCIATES JUSTICES OF THE CALIFORNIA COURT  
OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION EIGHT:

Respondent hereby requests permission to file an oversized  
supplemental letter brief exceeding 2,800 words within the meaning of Rule  
8.520(d)(2) of the California Rules of Court.

/

/

/

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and Respondent,  
v.  
KENNETH WAYNE MILLS,  
Defendant and Appellant.

B193456

Los Angeles County Superior Court No. VA088677  
The Honorable Cynthia Rayvis, Judge

**RESPONDENT'S REQUEST FOR PERMISSION  
TO FILE OVERSIZED SUPPLEMENTAL LETTER BRIEF**

EDMUND G. BROWN JR.  
Attorney General of the State of California

DANE R. GILLETTE  
Chief Assistant Attorney General

PAMELA C. HAMANAKA  
Senior Assistant Attorney General

LAWRENCE M. DANIELS  
Supervising Deputy Attorney General

STEPHANIE C. BRENAN  
Deputy Attorney General  
State Bar No. 183790

300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 897-2056  
Fax: (213) 897-6496

Attorneys for Respondent



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION EIGHT

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

KENNETH W. MILLS,

Defendant and Appellant.

)  
)  
) Court of Appeal  
) No. B193456  
)  
) Los Angeles County  
) Superior Court  
) No. VA088677  
)  
)

I.

MOTION TO AUGMENT THE  
RECORD ON APPEAL

Appellant respectfully requests pursuant rules 8.155 and 8.324 of the California Rules of Court for an order augmenting the record on appeal as specified herein. Appellate counsel has made no previous requests for augmentation.

Appellant requests the following:

*supposed to BE November 11, 2005*  
*with NO TRANSCRIPT*  
*NO REPORT*  
*RTS TRANSCRIPT*  
*11/11/05*  
*Mills B193456*  
Reporter's Transcript of November 11, 2005, Southeast Dept. SES, Judge Larry S. Knupp, Reporter Linda Peralta, where the prosecutor declared a doubt as to appellant's mental competency pursuant to Penal Code section 1368, and criminal proceedings were suspended;

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- 3) Reporter's Transcript of February 8, 2006, Southeast Dept. SES, Judge Larry S. Knupp, Reporter Linda Peralta, where the trial court granted appellant's

(1/06/22)

*B193456*  
*210F43*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION EIGHT

\_\_\_\_\_  
**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Plaintiff and Respondent,

v.

**KENNETH W. MILLS,**

Defendant and Appellant.

)  
)  
) Court of Appeal  
) No. B193456  
)  
) Los Angeles County  
) Superior Court  
) No. VA088677  
)  
)

DECLARATION OF SALLY P. BRAJEVICH IN SUPPORT OF  
MOTION TO AUGMENT RECORD ON APPEAL

SALLY P. BRAJEVICH declares under penalty of perjury:

I am the attorney appointed to represent appellant Kenneth W. Mills for this appeal. All of the factual statements made in the motion to augment the record are true and correct to the best of my knowledge. I have requested permission to file a letter brief asserting it was reversible error to neglect to appoint counsel to represent appellant during the competency proceedings pursuant to Penal Code section 1368. Counsel discovered the issue after the Appellant's Opening Brief had been filed, and prior to the filing of the Respondent's Brief. The materials sought to be included in the record are necessary for a proper determination of the appeal.

Executed on May 14, 2007, at San Pedro, California.

\_\_\_\_\_  
SALLY P. BRAJEVICH  
Attorney for Appellant  
KENNETH W. MILLS

*← NO Signature to BE a valid  
DECLARATION BM*

*(120F22) (2007)*

**SALLY P. BRAJEVICH**

Attorney at Law  
1379 Park Western Drive, #316  
San Pedro, California 90732  
Telephone: (310) 832-9385  
Fax: (310) 832-9684

May 14, 2007

**LEGAL MAIL**

**Privileged Attorney-Client Communications**

Mr. Kenneth W. Mills T-19095  
CSP - SAC  
P.O. Box 29  
Represa, CA 95671

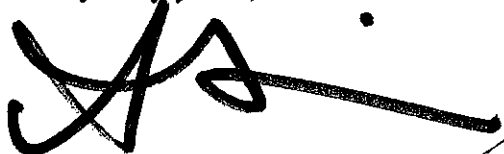
Re: *People v. Kenneth W. Mills*  
Court of Appeal No. B193456  
Superior Court No. VA088677

Dear Mr. Mills:

Enclosed is a copy of a letter brief I filed with the Court of Appeal. I have argued the trial court committed reversible error when it failed to appoint counsel to represent you during the competency proceedings. A copy of the motion to augment the record which was filed is also enclosed.

When there is a development in your case I will notify you.

Very truly yours,



Sally P. Brajevich

Enclosures (motion to augment, letter brief)

*speedy trial issues (60 days) Appeal Attorney want  
Place in Appeal.*

*Mills B193456*

*NOT CORRECT signature to BE VALID  
UNDER LAWS OF CALIFORNIA.*

*A DELIBERATE attempt KM  
to mislead K. Mills*

*(140222) (3007)*

**SALLY P. BRAJEVICH**

Attorney at Law  
1379 Park Western Drive, #316  
San Pedro, California 90732  
Telephone: (310) 832-9385  
Fax: (310) 832-9684

07-12239

STATE BAR NO.

March 5, 2007

**LEGAL MAIL**

**Privileged Attorney-Client Communications**

Mr. Kenneth W. Mills T-19095  
N.K.S.P. D-6 127L  
P.O. Box 5000  
Delano, CA 93216

Re: *People v. Kenneth W. Mills*  
Court of Appeal No. B193456  
Superior Court No. VA088677

Dear Mr. Mills:

You recent lettered stated your sister had hired an attorney to represent you in the Court of Appeal and in the California Supreme Court. Please have the attorney file a Motion for Substitution of Attorney with the Court of Appeal and serve me with a copy. As soon as the Court of Appeal grants the substitution motion I will be able to withdraw from your case. Until then, I have a duty to represent you.

You mentioned you addressed another correspondence to my husband at his office. To insure all of your communications reach me please make sure they are sent to me at the address noted above.

Your letter mentions a speedy trial violation. As I have explained repeatedly on February 6, 2007, and January 16, 2007, this is not a viable issue. A criminal defendant must be brought to trial within 60 days following his arraignment. In your case 60 days after the arraignment would have been Monday November 6, 2005, since the 60<sup>th</sup> day fell on a Saturday, and the matter is continued to the following court date. However, on November 2, 2005, the prosecutor declared a doubt as to your competency, and the trial court (suspended criminal proceedings so that your competency could be evaluated as the law requires under Penal Code section 1368. The courts have determined a delay past day 60 to evaluate competency constitutes "good cause," and does not violate the defendant's speedy trial rights. (*Craft v. Superior Court* (2006) 140 Cal.App.4th 1553, 1544.) This means it was legal for the trial to be delayed past November 6, 2005.

You were found competent and criminal proceedings resumed on February 8, 2006. (ICT

IM REQUESTING to have ORIGINAL COPY OF THIS DOCUMENT to SEND to SUPREME COURT OF CALIFORNIA. Thank You

Kenneth Mills T-19095  
Illegal Imprisonment with  
APPEAL ATT. CONSPIRACY AGAINST  
ME: Kenneth Mills T-19095

Illegal incarceration which appeal attorney went place in  
appeal with B193456

57 or 60  
days to go  
trial

PRO PER  
I APPEARED  
AS PROPER  
prosecution

(2004) (4067)  
(3006) (170622)

CONTINUING  
FROM PLACE OF DAYS to HAVE  
STOPPAGE ME IN TRIAL

trial UNlawfully stopped

Mr. Kenneth W. Mills

March 5, 2007

**Privileged Attorney-Client Communications***Appellate. Trial Transcript*

53-54.) You filed a motion claiming a speedy trial violation on February 24, 2006. (ICT 55.) The courts have determined when criminal proceedings are resumed following a competency evaluation under Penal Code section 1368, the time starts at 0 of 60 again. The clock resets at zero. (Pen. Code, § 1382(a)(2); *People v. Love* (2005) 132 Cal.App.4th 276, 285.) Penal Code section 1382(a)(2) states unless good cause is shown the trial court should dismiss:

*Clock does not restart*

"In a felony case, when a defendant is not brought to trial within 60 days of the defendant's arraignment on an indictment or information, or reinstatement of criminal proceedings pursuant to Chapter 6 (commencing with Section 1367)..."

*THIS IS NOT RESTARTING TRIAL**NOT RESTARTING TRIAL ALL OVER AGAIN*

This means after you were found competent on February 8, 2006, the clock was reset at 0 of 60 and the court had 60 days to try you, on or before April 10, 2006 (which was a Sunday), giving the court until Monday, April 10, 2006, which is when your first trial began. (ICT 70.) Consequently, I am unable to raise this issue on appeal.

*I HAVE NO ISSUE ON THIS*

You mentioned the witnesses at trial lied about your statement/gesture that you poked the victim's eyes out with your fingers. This will be a difficult hurdle to overcome on appeal, since the jury heard the testimony against you, found the charges to be proven, and convicted you.

I also received your paperwork indicating you wish to proceed with the appeal despite the risk of a possible adverse consequence. The appeal is proceeding.

You have indicated you do not want me representing you. Unfortunately there is no right to represent yourself on appeal. Please be assured that I am diligently working on your case, and I want the best possible outcome for you.

*MADE (4) FOR REQUEST FOR MY COURT TRANSCRIPTS. ALL REQUEST DENIED ME*

You have also requested a copy of your trial transcripts. I have a copy of the trial transcripts in case number VA088677. You are only provided with one copy which I need to prepare the appeal. There is no right to represent yourself on appeal. If there is a specific witness you would like the testimony from, I can copy a portion of the record for you now. However, I need the transcripts until the state appeal is over. At that time I will promptly sent the records to you.

*I want provided with a copy of my trial transcript. Judge Cynthia Rye refused to give me copy. I request that copy of transcript 6-6-6*

*140661**33 of 85**(2 of 4) (180822)*



Mr. Kenneth W. Mills

March 5, 2007

Privileged Attorney-Client Communications

3

California Appellate Project has forwarded some papers you had sent the Court of Appeal which the Court of Appeal sent back to California Appellate Project. The Court of Appeal will not accept pro per filings from you at this time because you are represented by counsel. Please suspend all pro per filings until the completion of the state appeal.

*IM IN AIGENT, CAN'T EVEN HELP MYSELF*

In your papers you questioned whether the verdict forms were appropriate, and whether the jury was polled properly. I reviewed the jury verdict forms in this case and everything is in order. You also question whether you were fully advised of the right to appeal after your conviction. You filed a timely notice of appeal, so this is not a viable appellate issue.

*I MADE NO STATEMENT*

The file stamp by the Joseph Lane, Clerk of the Court of Appeal was another item you mentioned. Mr. Lane stamps routine orders. This is a common practice which does not present a viable appellate issue.

You elected to represent yourself at trial. Accordingly, you did not have an attorney represent you for the competency proceedings pursuant to Penal Code section 1368. You were not denied counsel for the competency hearings where you were found competent, you wanted to represent yourself, which is exactly what the trial court permitted.

*MUST HAVE BEEN REPRESENTED AS PER THE COMPETENCY PROCEEDINGS WHETHER I WANTED OR NOT*

Jail clothing was worn by you in the first trial which resulted in a hung jury. Since you were not convicted following that proceeding, this is not an issue which can be raised in this appeal.

*I NEVER MADE THIS AN ISSUE*

After the first jury trial, the jury was unable to reach a unanimous verdict, there was a hung jury, and a mistrial was declared. However double jeopardy does not bar a retrial after a hung jury. (People v. Batts (2003) 30 Cal.4th 660, 679.) Unfortunately this is not an appealable issue. WAS NOT DECIDED IN OPEN COURT, APPEAL ATTORNEY REFUSED TO BRING UP ON APPEAL MY CONSTITUTIONAL VIOLATIONS OF SPEEDY TRIAL ACT.

Your letter mentions you had filed a complaint against me with the state bar. If there are specific matters you would like me to address I will be pleased to do so. I want the best for your appeal.

*I REQUESTED FOR A SPEEDY TRIAL MATTER TO BE BROUGHT UP IN APPEAL. ATTORNEY REFUSED TO BRING UP SPEEDY TRIAL VIOLATIONS, (CONSTITUTIONAL VIOLATION)*

*Kenneth Mills*

*T-19095*

*(546)*

*340-35*

*(304)*

*(OVER CONT.) 190922*

*By Law I'm TO HAVE MY COMPETENCY HEARING REPEATED BE AT MY COMPETENCY HEARING I DIDN'T KNOW I WILL T-19095*

*TRYING TO HELP MYSELF SPEEDY TRIAL VIOLATIONS*



Mr. Kenneth W. Mills

March 5, 2007

Privileged Attorney-Client Communications

4

With respect to the conditions at the jail, the taking of property, the lockdown conditions, lack of hot water, and the denial of access to the law library, you may want to file a prisoner's rights case at the following address:

Judge David S. Wesley  
(re: Prisoner's Rights Cases)  
Dept. 102  
Clara Shortridge Foltz Criminal Justice Center  
210 W. Temple Street  
Los Angeles, CA 90012

Hopefully this information was beneficial. When there development in your case you I will notify you.

Very truly yours,

Sally P. Brajeovich

Sally P. Brajeovich is three (3) separate  
words - the signature is only (1) word.  
(Let's all connect) unlawful.

Kenneth  
Mills

T-19095

BY THIS ATTORNEY NOT FILING FOR SPEEDY TRIAL VIOLATION  
FOR CRIMINAL CASE NO. VA088677. VIOLATIONS OF CIVIL RIGHTS 11/02/2005  
CRIM. TRIAL FOR SAID CASE WAS UNLAWFUL STOPPED BY SUPERIOR COURT  
JUDGE LARRY KAMPP NOV. 02, 2005. I WAS A "PRO-PEP" - I DIDN'T GIVE  
MAKE ANY UNAPPROPRIATE ACTIONS IN SUPERIOR COURT OF CA.  
COUNTY OF L.A. CITY OF INGLEWOOD. I'M MENTALLY ILL (DIAGNOSED)  
SO I'M TO BE STUPID - I TAKE RIGHTS TAKEN BY JUDGE (CATHY RAYVINS)  
AND NOW "APPEAL ATTORNEY." I WANT TO FILE A COMPLAINT ON THE  
"UNLAWFUL ACTIONS" OF ATTORNEY SALLY P. BRAJEVICH (16/863) &  
REQUESTED LICENSE TO (4 OF 4) PRACTICE LAW IN CALIFORNIA STOPPED  
FOR UNLAWFUL ACTIONS. COMMITTED BY ATTORNEY AND SAID  
TO NOT BE ALLOWED TO DO HARMFUL/UNLAWFUL ACTIONS TO ANY  
ONE ELSE. THANK-YOU! GOD BLESS. Kenneth Mills T-19095 03/27/07  
(200822) (60661)

B193456  
270F43

5 of 23

NO SIGNATURE

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

COURT OF APPEAL - SECOND DIST.

SECOND APPELLATE DISTRICT

FILED

DIVISION EIGHT

JUL 11 2007

In re

B200127

JOSEPH A. LANE

Clerk

C. HON

Deputy Clerk

(Super. Ct. No. VA088677)

(Cynthia Rayvis, Judge)

KENNETH MILLS

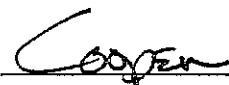
on Habeas Corpus.

ORDER

THE COURT\*:

We have read and considered (1) the petition for writ of habeas corpus filed on June 28, 2007,<sup>1</sup> and (2) a document purporting to be an "amended" petition which was received and filed on July 3, 2007.

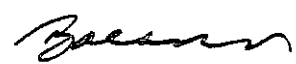
The petition, as amended, is denied for failure to allege sufficient facts demonstrating entitlement to relief.<sup>2</sup>



\*COOPER, P.J.,



RUBIN, J.,



BOLAND, J.

<sup>1</sup> On the cover of his petition, petitioner wrote the case number (B193456) of his pending appeal from the conviction at issue in this writ proceeding. Petitioner is represented by counsel in the appeal. All legal contentions in the appeal must be raised by counsel. (See *People v. Scott* (1998) 64 Cal.App.4th 550; *In re Walker* (1976) 56 Cal.App.3d 225.) For this reason, and because a petition for a writ of habeas corpus is distinct from an appeal, the clerk of this court assigned a separate case number to the writ petition.

<sup>2</sup> To the extent petitioner complains that an attorney should have been appointed for the competency proceedings, we note that the issue will be considered as part of petitioner's pending appeal as it was raised by petitioner's appellate counsel by way of a supplemental letter brief filed on May 15, 2007.

12 OF 16 30F10

Name

Address

CDC or ID Number

Petitioner

vs.

Respondent

### INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

KENNETH W. MILLS

SALINAS VALLEY STATE PRISON

POST OFFICE BOX-1050

SOLEDAD, CALIFORNIA 93860

T-19095

COURT OF APPEAL - SECOND DISTRICT  
IN APPELLATE DISTRICT DIVISION (8)  
(Court)

COURT OF APPEAL - SECOND DISTRICT

MC-275

JUN 28 2007

JOSEPH A. [Signature]

[Signature]

Deputy

B200127

### PETITION FOR WRIT OF HABEAS CORPUS

No.

(To be supplied by the Clerk of the Court)

B-193456

B192141 8/11

B192165 8/10

B193456 8/11

B193532 8/11

Where I am  
From: I don't  
know the  
conviction  
reinstated  
10/28/07

SECOND APPELLATE DISTRICT

DIVISION 8

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

KENNETH W. MILLS

Defendant and Appellant.

2d Crim. No. 13193456

(Super. Ct. No. VA 088677)

ORDER

Re: AUGMENTATION

☐ Appellant's motion to augment the record on appeal is granted. The record on appeal is ordered augmented with:

☐ document(s) filed with the motion to augment as [exhibit(s)] \_\_\_\_\_;

☐ trial court exhibit(s) \_\_\_\_\_;

☐ the superior court file;

☐ the transcripts described below.

☐ The clerk of the superior court is ordered to have prepared (an) augmented reporter's transcript(s) of the following:

|    | REPORTER'S NAME            | DEPT. | DATE     | NATURE OF PROCEEDINGS   |
|----|----------------------------|-------|----------|---|
| 1. | LINDA PERALTA              | SES   | 11-11-05 | COMPETENCY PROCEEDINGS PC 1368<br><del>THERE WERE NO COMPETENCY PROCEEDINGS THAT DATE</del> |
| 2. | LINDA PERALTA              | SES   | 12-28-05 | COMPETENCY PROCEEDINGS PC 1368<br>CONTINUED   |
| 3. | LINDA PERALTA              | SES   | 2-8-06   | MOTION FOR NEW JUDGE CCP 170.6<br>GRANTED   |
| 4. | LORI LYNN POON<br># 111628 | SET   | 2-8-06   | COMPETENCY PROCEEDINGS PC 1368<br><input type="checkbox"/> see additional page(s)           |

☐ The clerk of the superior court is ordered to prepare an augmented clerk's transcript consisting of the following:

|    | DATE | DOCUMENT DESCRIPTION  |
|----|------|---|
| 1. |      | SEALED REPORT OF DR. MARSHALL CHERKAS 12304 SANTA MONICA BL #320<br>(IN FILE) |
| 2. |      | SEALED REPORT OF DR. KAUSHAL SHARMA PO BOX 6275 (IN FILE)                     |
| 3. |      |   |
| 4. |      | <input type="checkbox"/> see additional page(s)                               |

☐ An original and \_\_\_\_\_ copies of the above transcripts are to be prepared within 30 days of this order. No requests for extensions of time will be granted. THE ORIGINAL AND ALL COPIES OF SEALED PROCEEDINGS ARE TO BE SENT TO THE COURT OF APPEAL ONLY. Otherwise, the original is to be delivered to the Court of Appeal, one copy to the Attorney General, and one copy to each party listed below:

☐ Appellant's opening brief is to be filed within \_\_\_\_\_ days of the filing of the augmented record.

☐ This Order continues on \_\_\_\_\_ additional page(s).

(CAP Rev. 5-1-91)

Date

Presiding Justice

(507)

(16022)

NO SIGNATURE TO BE AVOIDED  
COMMENT UNDER LAOR OF CALIFORNIA  
RM

\*25535 West's Ann.Cal.C.C.P. § 1209

**WEST'S CALIFORNIA  
COURT RULES  
CODE OF CIVIL  
PROCEDURE  
PART 3. OF SPECIAL  
PROCEEDINGS OF A CIVIL  
NATURE  
TITLE 5. OF CONTEMPTS**

*Current through Ch. 5 of 2007 Reg.Sess.  
urgency legislation*

**§ 1209. Acts or omissions constituting;  
stay of sentence pending appeal**

(a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding;

3. Misbehavior in office, or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

5. Disobedience of any lawful judgment, order, or process of the court;

6. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

7. Unlawfully detaining a witness, or party to an action while going to, remaining at, or

returning from the court where the action is on the calendar for trial;

8. Any other unlawful interference with the process or proceedings of a court;

9. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness;

10. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

11. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

\*25536 (b) No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings.

(c) Notwithstanding Section 1211 or any other provision of law, if an order of contempt is made affecting an attorney, his agent, investigator, or any person acting under the attorney's direction, in the preparation and conduct of any action or proceeding, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, the violation of which is the basis of the contempt, except for such conduct as may be proscribed by subdivision (b) of Section 6068 of the Business and Professions Code, relating to an attorney's duty to maintain respect due to the courts and judicial officers.



(d) Notwithstanding Section 1211 or any other provision of law, if an order of contempt is made affecting a public safety employee acting within the scope of employment for reason of the employee's failure to comply with a duly issued subpoena or subpoena duces tecum, the execution of any sentence shall be stayed pending the filing within three judicial days of a petition for extraordinary relief testing the lawfulness of the court's order, a violation of which is the basis for the contempt.

As used in this subdivision, "public safety employee" includes any peace officer, firefighter, paramedic, or any other employee of a public law enforcement agency whose duty is either to maintain official records or to analyze or present evidence for investigative or prosecutorial purposes.

### CREDIT(S)

(Enacted 1872. Amended by Stats.1891, c. 9, p. 6, § 1; Stats.1907, c. 255, p. 319, § 1; Stats.1939, c. 979, p. 2731, § 1; Stats.1975, c. 836, p. 1896, § 2; Stats.1982, c. 510, p. 2286, § 2.)

### REFERENCES

#### CODE COMMISSIONERS' NOTES

##### 1982 Main Volume

1. Disobedience to any lawful judgment, order, or process of the court--appeals.--If a Court, having jurisdiction, issues an erroneous order, a disobedience of it is contempt.--Ex Parte Cohen et als., 5 Cal., p. 494. But a commitment for contempt for disobedience to an unlawful order of a lower Court can be reviewed and set aside by the appellate Court.--Ex Parte Rowe, 7 Cal., p. 181. In an action for divorce the Court may order the husband to pay for the support of the wife during the litigation and for legal expenses; and obedience to such order may be enforced by imprisonment for contempt. In the regular course of judicial proceedings before a Court of general jurisdiction, the petitioner having notice of the proceedings has been ordered by the judgment of the Court to pay a certain sum of money, and in default of obedience to the order has been committed for contempt. The only question which petitioner in the Supreme Court can make, as affecting the

legality of his commitment, involves the power of the Court to make the order; he cannot question the regularity of the facts.--Ex parte Perkins, 18 Cal., p. 63. If the order of the Court, finding and imprisoning for contempt, does not specify on its face wherein the contempt existed, it will be reversed on certiorari.--Ex Parte Field, 1 Cal., p. 187. In a case where such an order was made it was held that a certiorari should issue to review the proceedings in the appellate Court, and a mandamus is not the proper remedy in such case.--People vs. Turner, 1 Cal., p. 152. The Supreme Court, on habeas corpus, must review the decisions of inferior Courts in cases of contempt.--Ex Parte Rowe, 7 Cal., p. 181. A County Treasurer who does not obey an order of Court, directing him to pay money to a witness for expenses, cannot be punished for contempt without some proceeding to which the Treasurer is made a party. Sargent vs. Cavis, 36 Cal., p. 553.

\*25537 2. Refusing to be sworn as witness.--A party committed for refusing to answer questions propounded to him as a witness, under an order that he stand committed till he answer the questions, will be discharged on habeas corpus, where it appears that the suit has abated; there being no longer parties or subject matter before the Court, there is no longer a case in which the questions can be asked. Ex Parte Rowe, 7 Cal., p. 175.

3. Disobeying injunction--punishable only by District Court.--A County Judge, in granting an injunction upon a bill filed in the District Court, acts as an injunction master, and exercises a power auxiliary to the jurisdiction of the District Court. The effect of the order is the same as if made by the District Court, and the injunction is subject to be controlled, modified, or dissolved by the District Judge, the same as if issued by his order in the first instance. Crandall vs. Woods, 6 Cal., p. 449; Borland vs. Thornton, 12 Cal., p. 440. The contempt complained of was neither a contempt of the County Court nor of the County Judge, but of the District Court in which the action was pending, and by whose authority, in legal contemplation, the writ on injunction was issued; and it follows, if the relators were guilty of disobeying the writ, that the jurisdiction to try and punish them for the contempt is in the District Court alone.--People vs. County Judge of Placer Co., 27 Cal., p. 152.

### OFFICIAL FORMS



**2007 Electronic Update**

< Mandatory and optional Forms adopted and approved by the Judicial Council are set out in West's California Judicial Council Forms Pamphlet. >

**HISTORICAL NOTES****HISTORICAL AND STATUTORY NOTES****1982 Main Volume**

The amendment of 1891 added the provisions now constituting the penultimate paragraph.

This section was amended by the 1901 revision act, Stats.1901, c. 102, p. 192, § 274. However, on the authority of *Lewis v. Dunne* (1901) 66 P. 478, 134 Cal. 291, 55 L.R.A. 833, 86 Am.St.Rep. 257, the 1901 revision act was declared unconstitutional and void.

The amendment of 1907 rewrote subd. 4, which had read:

"Deceit or abuse of the process or proceedings of the Court, by a party to an action or special proceeding."

The 1907 amendment deleted from the subdivision now designated as subd. 11, a sentence which provided "Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer."

The 1907 amendment also added a subd. 13, making the practice of law or the advertising or holding one's self out as practicing or as entitled to practice, without a license, a contempt.

The 1939 amendment deleted former subd. 6 which declared to be a contempt the assuming to be an officer, attorney, or counselor of a court, and acting as such, without authority and former subd. 13, which had been added in 1907. The remaining subdivisions were appropriately renumbered.

The deleted provisions were reenacted as a part of Business and Professions Code § 6127.

The 1975 amendment added the last paragraph.

**2007 Electronic Update**

The 1982 amendment inserted letter designations for subs. (a), (b) and (c); and added subd. (d).

**REFERENCES****CROSS REFERENCES**

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Acts or omissions constituting contempt, see Business and Professions Code § 6127.

Disciplinary authority of courts, see Business and Professions Code § 6100 et seq.

Duties toward court, see Business and Professions Code § 6068.

Unlawful practice, see Business and Professions Code § 6125 et seq.

\*25538 Citation, refusal to obey citation, see Probate Code § 8870.

Disobedience of order of appearance before workmen's compensation appeals board, see Labor Code § 132.

Disobedience to subpoena, board of governors and bar committees, see Business and Professions Code §§ 6050, 6051.

Disobedience to subpoena or refusal to be sworn or to answer or subscribe affidavit or deposition, see Code of Civil Procedure § 1991 et seq.

Employer's failure to report injury as ordered, see Labor Code § 3760.

Failure, upon subsequent application for order, to reveal facts of prior application, see Code of Civil Procedure § 1008.

Failure to appear at custody and control hearing, see Family Code § 7883.

Jurors, failure to attend, see Code of Civil Procedure § 238. Misdemeanor, contempts constituting, see Penal Code § 166.

Newsman's refusal to disclose news source, see Evidence Code § 1070.

Noncompliance of personal representative with order to attend or answer at hearing, see Probate Code § 8500.

Power of courts, see Code of Civil Procedure § 128.

Power of judicial officers, see Code of Civil Procedure §§ 177, 178.

Privileged information, failure to disclose, see Evidence Code § 914.

Proof of instruments, power of officer to punish for contempt, see Civil Code § 1201.

Re-entry upon property after dispossession, see Code of Civil Procedure § 1210.

Refusal to,

Be sworn, depositions, see Code of Civil Procedure § 1991.1.

Make discovery, see Code of Civil Procedure § 2031.

Submit to examination or answer interrogatories, see Probate Code § 8870.

\*25539 Supplemental proceedings, disobedience of referee's orders, see Code of Civil Procedure § 708.140.

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**\*25540** Commission in immediate presence of the court, ambulance chasing and claim adjusting. (1928) 2 S.Cal.L.Rev. 167.

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## UNITED STATES SUPREME COURT

Due process, summary contempt, attorney's questions on prohibited topic, disruption of judicial proceedings and damage to court authority, see *Pounders v. Watson*, 1997, 117 S.Ct. 2359.

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 Respect due courts by attorneys, see Notes of Decisions under Business and Professions Code § 6068.

## 1. Validity

Violation of injunction as ground for contempt, see, also, Notes of Decisions under §§ 526, 527.

The statutory provision, that no speech or publication reflecting on or concerning any court or any officer thereof shall be treated or punished as contempt unless made in the immediate presence of such court while in session and in such manner as actually to interfere with its proceedings, is unconstitutional on the ground that courts of the state have inherent power to punish for contempt, and hence did not preclude proceedings for contempt against one who sent and caused to be published the contents of a telegram criticizing the court's decision and making threats if the decision should be enforced. *Bridges v. Superior Court of Los Angeles County* (1939) 14 Cal.2d 464, 94 P.2d 983, certiorari granted 60 S.Ct. 807, 309 U.S. 649, 84 L.Ed. 1001, reversed 62 S.Ct. 190, 314 U.S. 252, 86 L.Ed. 192. Constitutional Law ¶52; Contempt ¶5

## 2. In general

Commitment for contempt for failure to pay master's fee awarded by court, made on application of the master, is not an "imprisonment for debt," but for refusal to obey the order of the court. *Cutting v. Van Fleet*, 1918, 252 F. 100, 164 C.C.A. 212. Constitutional Law ¶83(3); Contempt ¶25

Disobedience of any lawful judgment, order, or process of court is a form of contempt of court. In re Estate of Beard (App. 1 Dist. 1999) 84 Cal.Rptr.2d 276, 71 Cal.App.4th 753. Contempt ⚡20

Although rarely invoked against a public official, contempt power is available against district attorneys as well as other trial participants. People v. Superior Court of Contra Costa County (1977) 137 Cal.Rptr. 476, 19 Cal.3d 255, 561 P.2d 1164. Contempt ⚡30

\*25554 Bank, as holder of escrow in connection with liquor license transfer, could not avoid liability to seller's creditor on ground of impossibility, based on claim that court order in action by third persons obliged bank to disburse all funds to them, particularly since bank, despite knowledge of plaintiff creditor's claim, consented to order in earlier action. Webster v. Southern California First Nat. Bank (App. 4 Dist. 1977) 137 Cal.Rptr. 293, 68 Cal.App.3d 407. Deposits And Escrows ⚡24.1

Judge has duty to exercise contempt power to protect integrity of court and judicial process but he must do so with great caution so as not to stifle freedom of thought and speech. DeGeorge v. Superior Court for County of Los Angeles (App. 2 Dist. 1974) 114 Cal.Rptr. 860, 40 Cal.App.3d 305. Contempt ⚡30

Defendant's carrying into courtroom a dull folded knife, in a "case," which was strapped to his waist and which defendant testified he used in his work and for recreation, was not contempt. In re Carvallo (App. 1 Dist. 1973) 105 Cal.Rptr. 925, 29 Cal.App.3d 983. Contempt ⚡7

Dismissal of contempt citation against paternal grandmother for allegedly aiding, abetting and assisting her son in depriving his divorced wife of custody of children was quasi criminal in nature as respects issue whether prior acquittal collaterally estopped wife from instituting subsequent civil litigation seeking damages from the grandmother for her alleged participation in abduction and secretion of children. Gibson v. Gibson (App. 3 Dist. 1971) 93 Cal.Rptr. 617, 15 Cal.App.3d 943. Judgment ⚡648

Contempt is a drastic remedy to be employed only when necessary for the proper and orderly conduct of judicial proceedings. In re Hagan (App. 2 Dist. 1964) 36 Cal.Rptr. 828, 224 Cal.App.2d 590. Contempt ⚡2

Courts have inherent power to enforce the effective conduct of judicial proceedings in order to insure orderly administration of justice and legislature has codified this principle by granting power to every court to provide for the orderly conduct of proceedings before it. Cantillon v. Superior Court In and For Los Angeles County (App. 1957) 150 Cal.App.2d 184, 309 P.2d 890. Courts ⚡78

Under provision of this section declaring that disobedience of any lawful judgment, order, or process of court is a contempt of authority of that court and statutes

providing for procedure in contempt proceedings, within statute providing that word person "includes" a corporation as well as a natural person, quoted word is used as a word of enlargement, not of limitations. Oil Workers Intern. Union, CIO v. Superior Court, Contra Costa County (App. 1951) 103 Cal.App.2d 512, 230 P.2d 71. Contempt ⚡28(3)

\*25555 Automobile indemnity insurer, which elected to proceed with defense of personal injury action against assured with knowledge that assured would not be present, did not waive defense of nonliability for assured's breach of co-operation clause and was not estopped to disclaim liability on such ground, since willful neglect of attorneys to defend assured unless excused by him or order of court would have subjected them to punishment for contempt. McDanel v. General Ins. Co. of America (App. 1934) 1 Cal.App.2d 454, 36 P.2d 829. Insurance ⚡3214

Pen.C. § 166, subd. 4, making disobedience of process or order lawfully issued by court a misdemeanor, in view of Pen.C. §§ 11, 657, 658, is remedial statute, and the remedy provided thereby is in addition to the remedies provided by this section and C.C.P. §§ 1210 to 1222, relating to contempt; and the offenses denounced in the former Code provision are separate and distinct from those denounced in the latter, and the question of "once in jeopardy" does not arise thereunder. In re Morris (1924) 194 Cal. 63, 227 P. 914. Contempt ⚡38

Red Light Abatement Act, prescribing penalty for violation of an injunction order under such act, is not in conflict with this section and § 1218, relating to contempt. Ex parte Selowsky (App. 1918) 38 Cal.App. 569, 177 P. 301. Nuisance ⚡60

Court could not divest itself of jurisdiction, previously acquired, on ground conduct of counsel was disrespectful. Zumbusch v. Superior Court in and for Los Angeles County (App. 1913) 21 Cal.App. 76, 130 P. 1070. Contempt ⚡80

Provision of 1891 amendment that no statement concerning a court shall be treated as contempt unless made in immediate presence of such court did not qualify subdivision 3 of this section which makes violation of attorney's duty to court contempt. In re Shay (1911) 160 Cal. 399, 117 P. 442. Contempt ⚡5

Provision of this section, which, in specifying acts "in respect to a court of justice or proceedings therein," constituting contempts, names "misbehavior in office or other willful neglect or violation of duty by a sheriff or other person appointed or elected to perform a judicial or ministerial service" includes misbehavior done "in respect to" such court of some proceeding therein, not an unauthorized arrest not shown to be a willful disobedience of any judgment, order, or process of the court. Hutton v. Superior Court of City and County of San Francisco (1905) 147 Cal. 156, 81 P. 409. Contempt ⚡10



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\*25556 Statute relating to contempt constitutes limitation upon power formerly exercised by courts to punish for contempt. *Galland v. Galland* (1872) 44 Cal. 475, 13 Am.Rep. 167. Contempt ☞33

Probation officers are persons "appointed or elected to perform a judicial or ministerial service" as that term is used in this section. 59 Op.Atty.Gen. 529, 9-21-76.

### 3. Due process

Due process challenge to contempt convictions on theory that acts forming basis for contempt were not within prohibitions of this section can succeed only if there is no evidence that acts violated provisions of this section. *Hawk v. Cardoza*, C.A.9 (Cal.)1978, 575 F.2d 732. Constitutional Law ☞273

Even though punishment for contempt citations issued against defense counsel during criminal proceeding were deferred until after trial, due process did not require that defense counsel be heard in defense and mitigation at conclusion of trial where he was given an opportunity to explain his conduct and addressed the issue of punishment soon after each incident of contempt. *Hawk v. Cardoza*, C.A.9 (Cal.)1978, 575 F.2d 732. Constitutional Law ☞273

Because of the penalties that may be imposed, a civil contempt proceeding is criminal in nature, and the constitutional rights of the accused must be observed; for example, he is entitled to presumption of innocence, cannot be compelled to testify, contempt must be proved beyond a reasonable doubt, and presumptions or inferences may not be indulged in to support the contempt order. In *re Martin* (App. 5 Dist. 1977) 139 Cal.Rptr. 451, 71 Cal.App.3d 472. Contempt ☞30; Contempt ☞60(1)

Due process requires that someone other than trial judge try contempt charge against lawyer if the trial judge has become so personally embroiled with the lawyer at trial as to make the judge unfit to sit in judgment on the contempt charge, and inquiry must be not only whether there was actual bias on judge's part, but whether there was likelihood of bias or appearance of bias. In *re Martin* (App. 5 Dist. 1977) 139 Cal.Rptr. 451, 71 Cal.App.3d 472. Constitutional Law ☞273

Whether direct or indirect, where hearing on contempt is continued to a later date, basic due process requires that the hearing be before a truly impartial judge. In *re Martin* (App. 5 Dist. 1977) 139 Cal.Rptr. 451, 71 Cal.App.3d 472. Constitutional Law ☞273

\*25557 If contempt did not occur in immediate view and presence of court, it is "indirect contempt"; in such cases an affidavit must be presented to court stating facts constituting contempt, an order to show cause issued and a hearing on facts must be held by judge. *Rosenstock v. Municipal Court of Los Angeles Judicial Dist.* (App. 2 Dist. 1976) 132 Cal.Rptr. 59, 61 Cal.App.3d 1. Contempt ☞

53; Contempt ☞54(1); Contempt ☞55; Contempt ☞61(1).

Where trial judge did not wait to adjudge petitioner-attorney in contempt, but immediately cited him and soon thereafter signed the order of commitment, and where it could not be said from a review of the record that the trial judge, even assuming that he misinterpreted petitioner's later apology attempt, was so personally embroiled with petitioner that he was unfit to sit in judgment on the contempt charge, the trial judge was not required, as a matter of due process, to refer the adjudication of the alleged contempt to another judge. In *re Buckley* (1973) 110 Cal.Rptr. 121, 10 Cal.3d 237, 514 P.2d 1201, certiorari denied 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed.2d 1156. Constitutional Law ☞273

Attorney who is accorded a hearing and opportunity by trial judge to present evidence and to attempt to explain his conduct with respect to filing false affidavit of disqualification against judge and against whom a contempt order and judgment is entered which recites facts constituting a contempt, adjudges the attorney guilty and prescribes punishment is not denied due process. In *re Ciralo* (1969) 74 Cal.Rptr. 865, 70 Cal.2d 389, 450 P.2d 241. Constitutional Law ☞273

Defendant, who was charged with indirect contempt because of alleged violation of injunctive order of court, could not be deprived of his property or liberty without evidence being offered against him in accordance with established rules and opportunity to cross-examine those whose evidence was given against him and opportunity to present evidence in his own behalf. *Bone v. Superior Court for Los Angeles County* (App. 2 Dist. 1966) 54 Cal.Rptr. 406, 245 Cal.App.2d 972. Injunction ☞230(1)

Since the charge of contempt is essentially criminal in nature, due process requires notice and an opportunity to prepare a defense before an adjudication of constructive contempt can be made. In *re Wren* (1957) 48 Cal.2d 159, 308 P.2d 329. Constitutional Law ☞273

### 4. Nature and elements of contempt

Nature of contempt proceedings, see note 79, post.

It is contempt of court for one to take money under a pretense that he can and will corruptly influence the court in rendering its decision in a pending case. In *re Taylor* (1886) 10 P. 88, 2 Cal.Unrep. 648; In *re Buckley* (1886) 10 P. 69, 69 Cal. 1.

\*25558 Any act calculated to embarrass, hinder or obstruct court in administration of justice or to lessen its authority or dignity is a "contempt". *U.S. v. Pearson*, N.D.Cal.1945, 62 F.Supp. 767. Contempt ☞2

As a general rule, the elements of contempt include: (1) a valid order, (2) knowledge of the order, (3) ability to comply with the order, and (4) willful failure to comply



with the order. *Matter of Ivey* (App. 2 Dist. 2000) 102 Cal.Rptr.2d 447, 85 Cal.App.4th 793. Contempt ☞20

Contempt is proper sanction only for willful misconduct. *Runnion v. Workers' Comp. Appeals Bd.* (App. 1 Dist. 1997) 69 Cal.Rptr.2d 105, 59 Cal.App.4th 277. Contempt ☞2

Contempt is criminal in nature. *Nierenberg v. Superior Court for Los Angeles County* (App. 2 Dist. 1976) 130 Cal.Rptr. 847, 59 Cal.App.3d 611. Contempt ☞3

Judge's summary contempt power must be exercised with great caution, lest it stifle the freedom of thought and speech so necessary to a fair trial under our adversary system; but when aggressive advocacy gives way to insolence and disrespect for the court and particularly when it degenerates into impertinent, scandalous, insulting or contemptuous language reflecting on the court's integrity, it is the judge's bounden duty to protect the integrity of his court. *In re Buckley* (1973) 110 Cal.Rptr. 121, 10 Cal.3d 237, 514 P.2d 1201, certiorari denied 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed.2d 1156. Contempt ☞10

Contempt proceedings are quasi criminal in character, and judgments of conviction in such cases are governed by the rules applicable to criminal cases. *Turkington v. Municipal Court of City and County of San Francisco* (App. 1 Dist. 1948) 85 Cal.App.2d 631, 193 P.2d 795. Contempt ☞40; Contempt ☞63(1)

"Contempt" may be committed by incorporating impertinent, scandalous, insulting or contemptuous language reflecting on integrity of the court in pleadings, motions, notice of motions, affidavits and other papers filed in court. *Hume v. Superior Court in and for Los Angeles County* (1941) 17 Cal.2d 506, 110 P.2d 669. Contempt ☞8

Course of conduct creating atmosphere of distrust and suspicion in public mind, thereby influencing action of court and judges with respect to causes pending and undetermined, constitutes "contempt." *In re Shuler* (1930) 210 Cal. 377, 292 P. 481. Contempt ☞9

\*25559 Violation of law does not per se constitute contempt of court. *Hotaling v. Superior Court, City and County of San Francisco* (1923) 191 Cal. 501, 217 P. 73. Contempt ☞2

Violation of rights of ownership, even though they have been ascertained and declared by judgment, unless it consists in doing something which was prohibited or in failing to do something which was required by terms of the judgment, is not contempt. *Hotaling v. Superior Court, City and County of San Francisco* (1923) 191 Cal. 501, 217 P. 73. Contempt ☞20

The phrase "contempt of court," like the word "crime," is generic and expresses within its legal signification a variety of different acts which involve different elements, which,

like the different acts constituting different crimes, differentiate the several acts, and the legislature may fix the punishment according to the gravity of the offense. *Ex parte Selowsky* (App. 1918) 38 Cal.App. 569, 177 P. 301. Contempt ☞2

Claiming to have influence with a court and to be able through such influence to be able to obtain a decision favorable to a particular party constitutes contempt of court. *In re Buckley* (1886) 69 Cal. 1, 10 P. 69.

Contempt may be shown by language or behavior, and in determining whether language is contemptuous, regard must be had to words used and surrounding circumstances. *In re Hallinan* (App. 1932) 126 Cal.App. 121, 14 P.2d 797. Contempt ☞6

### 5. Direct contempt

A petition for rehearing stated that "how or why the honorable commissioner should have so effectually and substantially ignored and disregarded the uncontradicted testimony we do not know. It seems that neither the transcript nor our briefs could have fallen under" the commissioner's observation. "There is not a scintilla of evidence to the contrary, and yet the honorable commissioner assumes," etc., and "in very euphuistic language says," etc. "A more disingenuous and misleading statement of the evidence could not well be made." "It is substantially untrue, and unwarranted." "The decision seems to us to be a travesty of the evidence." It was held that counsel drafting petition was guilty of contempt committed in face of court, notwithstanding a disavowal of disrespectful intention. *McCormick v. Sheridan* (1888) 20 P. 26, 3 Cal.Unrep. 39; *McCormick v. Sheridan* (1888) 20 P. 24, 3 Cal.Unrep. 35.

\*25560 Direct contempt is that committed in the immediate view and presence of the court or of the judge in chambers. *In re Marcus* (App. 6 Dist. 2006) 41 Cal.Rptr.3d 861, 138 Cal.App.4th 1009. Contempt ☞2

An attorney commits a direct contempt when he impugns the integrity of the court by statements made in open court either orally or in writing. *In re White* (App. 3 Dist. 2004) 18 Cal.Rptr.3d 444, 121 Cal.App.4th 1453. Contempt ☞10

The inclusion of a contemptuous statement in a document filed in a court is a contempt committed in the immediate presence of the court and thus constitutes a direct contempt. *In re White* (App. 3 Dist. 2004) 18 Cal.Rptr.3d 444, 121 Cal.App.4th 1453. Contempt ☞6

Willful failure to comply with an order of the court constitutes "contempt." *In re Rubin* (2001) 108 Cal.Rptr.2d 593, 25 Cal.4th 1176, 25 P.3d 1075. Contempt ☞20

Willful failure to comply with an order of the court constitutes "contempt." *In re Garland* (2001) 108 Cal.Rptr.2d 591, 25 Cal.4th 1172, 25 P.3d 1074. Contempt

☞20

Defense counsel's failure to comply with Supreme Court's order to file defendant's opening appellate brief by certain date was an act occurring within immediate view and presence of court and constituted direct contempt; attorney was aware of and had ability to comply with order, and her failure to do so was willful. *In re Grayson* (1997) 64 Cal.Rptr.2d 102, 15 Cal.4th 792, 937 P.2d 645. Contempt ☞20

Court punished newsmen for direct contempt where their refusal to answer questions occurred in court's immediate presence. *In re Willon* (App. 6 Dist. 1996) 55 Cal.Rptr.2d 245, 47 Cal.App.4th 1080, rehearing denied, review denied. Witnesses ☞21

Direct contempt may be punished summarily, but court must state the facts on which order is based with sufficient particularity to demonstrate on its face, without the aid of speculation, that the conduct constituted a legal contempt. *In re Willon* (App. 6 Dist. 1996) 55 Cal.Rptr.2d 245, 47 Cal.App.4th 1080, rehearing denied, review denied. Contempt ☞52; Contempt ☞63(4)

Contempt committed in immediate view and presence of court, known as "direct contempt," may be treated summarily, and all that is required is that an order be made reciting facts, adjudging the person guilty, and prescribing the punishment. *Rosenstock v. Municipal Court of Los Angeles Judicial Dist.* (App. 2 Dist. 1976) 132 Cal.Rptr. 59, 61 Cal.App.3d 1. Contempt ☞52

**\*25561** A direct contempt order is valid only if it recites facts with sufficient particularity to demonstrate on its face that petitioner's conduct constituted a legal contempt. *In re Buckley* (1973) 110 Cal.Rptr. 121, 10 Cal.3d 237, 514 P.2d 1201, certiorari denied 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed.2d 1156. Contempt ☞63(4)

An attorney commits a direct contempt when he impugns the integrity of the court by statements made in open court either orally or in writing. *In re Buckley* (1973) 110 Cal.Rptr. 121, 10 Cal.3d 237, 514 P.2d 1201, certiorari denied 94 S.Ct. 3202, 418 U.S. 910, 41 L.Ed.2d 1156. Contempt ☞10

Power to adjudicate a direct contempt is necessarily of an arbitrary nature and should be used with great prudence and caution and judge should bear in mind that he is engaged, not so much in vindicating his own character, as in promoting respect due to administration of laws. *Mowrer v. Superior Court In and For Los Angeles County* (App. 2 Dist. 1969) 83 Cal.Rptr. 125, 3 Cal.App.3d 223. Contempt ☞39

The power to adjudicate a direct contempt is necessarily of an arbitrary nature, and should be used with great prudence and caution. *Lyons v. Superior Court In and For Los Angeles County* (1955) 43 Cal.2d 755, 278 P.2d 681, certiorari denied 76 S.Ct. 121, 350 U.S. 876, 100 L.Ed. 774

. Contempt ☞30

Failure of mother to comply with court order to bring minor into court constituted direct contempt, and hence court properly found her guilty of contempt, notwithstanding contempt proceeding was not initiated by affidavit, where mother was given opportunity before order was made to explain reasons of her failure to obey order. *Ex parte Carr* (App. 1 Dist. 1944) 65 Cal.App.2d 681, 151 P.2d 164. Child Custody ☞862

Filing points and authorities on demurrer, with clerk, containing inferable innuendo that judge was acting corruptly in interest of adversary, constituted direct contempt punishable summarily. *Blodgett v. Superior Court of Santa Barbara County* (1930) 210 Cal. 1, 290 P. 293. Contempt ☞52

Attorney, who presented to judge in open court a scandalous affidavit in support of application for change of judges, committed contempt in presence of court, within § 1211, providing that, where a contempt is committed in the presence of the court, it may be punished summarily, etc., notwithstanding provision of this section defining contempt, and, therefore, court could proceed summarily or by citation to show cause and could allow showing in defense, extenuation, or mitigation. *Lamberson v. Superior Court of Tulare County* (1907) 151 Cal. 458, 91 P. 100. Contempt ☞52

#### **\*25562 6. Constructive or indirect contempt, generally**

An indirect contempt finding may not be based upon an oral ruling of the court. *In re Marcus* (App. 6 Dist. 2006) 41 Cal.Rptr.3d 861, 138 Cal.App.4th 1009. Contempt ☞20

Contempt that occurs outside the presence of the court is indirect contempt, which is also known as constructive contempt. *In re Marcus* (App. 6 Dist. 2006) 41 Cal.Rptr.3d 861, 138 Cal.App.4th 1009. Contempt ☞2

Disobedience of lawful order of the superior court is constructive contempt. *Ketscher v. Superior Court of Fresno County* (App. 5 Dist. 1970) 88 Cal.Rptr. 357, 9 Cal.App.3d 601. Contempt ☞20

If a person by false charges against a court does directly interfere with the administration of justice, he may be punished for a constructive contempt and the constitutional guaranty of freedom of speech will not protect him, but before he can be so punished, the false charges must be of such nature that they not only have a reasonable tendency to obstruct justice, but must also constitute a clear and present danger to the administration of justice. *Turkington v. Municipal Court of City and County of San Francisco* (App. 1 Dist. 1948) 85 Cal.App.2d 631, 193 P.2d 795. Constitutional Law ☞90.1(3); Contempt ☞8

Resolution of traffic and highway committee of chamber of commerce, published in newspapers of San Francisco,

seeking removal of the judge of the traffic court in effect amounting to a criticism of the judge's general attitude toward traffic regulations, the public officers whose duty it was to enforce them, and charging that he favored certain traffic offenders, further charging that his actions had "lessened his efficiency and his dignity and that he ought to be removed as unsuited to the duties required of him", did not constitute an "imminent peril to the orderly administration of justice" so as to authorize conviction of members of the committee of either direct or constructive contempt of court. *Turkington v. Municipal Court of City and County of San Francisco* (App. 1 Dist. 1948) 85 Cal.App.2d 631, 193 P.2d 795. Contempt Ⓒ8

Disobedience of witness to subpoena requiring him to give deposition in pending action before notary constitutes "constructive contempt." *Dreher v. Superior Court of Riverside County* (App. 1932) 124 Cal.App. 469, 12 P.2d 671. Pretrial Procedure Ⓒ73

\*25563 Legislature could provide procedure for hearing and determination of cases of constructive contempt. *Briggs v. Superior Court of Los Angeles County* (1931) 211 Cal. 619, 297 P. 3. Contempt Ⓒ61(1)

Section 170, prohibiting judge from passing on his disqualification was applicable to constructive criminal contempt proceeding. *Briggs v. Superior Court of Los Angeles County* (1931) 211 Cal. 619, 297 P. 3. Judges Ⓒ51(4)

Court has inherent power to punish for contempt, though committed out of its presence, notwithstanding statute. *In re Shuler* (1930) 210 Cal. 377, 292 P. 481. Contempt Ⓒ30

Court cannot punish for contempt occurring out of judge's presence unless definite order is violated. *Jones v. Superior Court of Cal. in and for Los Angeles County* (App. 2 Dist. 1928) 88 Cal.App. 253, 262 P. 1098. Contempt Ⓒ21

To constitute a constructive contempt for failure to obey an order carrying into effect a final decree after going down of remittitur, there must have been an omission to perform an act which was required by the terms of the original order. *Hotaling v. Superior Court, City and County of San Francisco* (1923) 191 Cal. 501, 217 P. 73. Contempt Ⓒ21

"Constructive contempt" is one committed beyond presence of court. *Frowley v. Superior Court of Modoc County* (1910) 158 Cal. 220, 110 P. 817. Contempt Ⓒ2

Failure to comply with order directing husband to make delinquent alimony payments within specified time constitutes "constructive civil contempt." *Ruppe v. Superior Court of Los Angeles County* (App. 1932) 127 Cal.App. 118, 15 P.2d 197. Divorce Ⓒ269(1)

## 7. Civil and criminal contempts

Distinction between civil and criminal contempt proceedings hinges on the nature of the relief to be afforded; coercive penalties that may be avoided by compliance with the order and are designed to achieve the object of the order remain civil in nature, but punitive measures that cannot be escaped by compliance and are intended to vindicate the authority of the court take on criminal overtones, triggering the due process right to have the prosecuting party bear its full burden of proof as to each element of the crime. *Matter of Ivey* (App. 2 Dist. 2000) 102 Cal.Rptr.2d 447, 85 Cal.App.4th 793. Constitutional Law Ⓒ273; Contempt Ⓒ3; Contempt Ⓒ4

\*25564 A contempt is civil for federal constitutional purposes if the order of contempt ultimately entered allows the contemner to purge the contempt by performing an act completely within the contemner's control; in such circumstances due process considerations are inapplicable. *Matter of Ivey* (App. 2 Dist. 2000) 102 Cal.Rptr.2d 447, 85 Cal.App.4th 793. Constitutional Law Ⓒ273; Contempt Ⓒ4

If the contemner does not have the power to purge the contempt, the proceedings are deemed criminal. *Matter of Ivey* (App. 2 Dist. 2000) 102 Cal.Rptr.2d 447, 85 Cal.App.4th 793. Contempt Ⓒ3

Contempt proceedings are characterized as "quasi-criminal," with judgments of conviction governed by rules applicable to criminal cases; however, for purposes of federal due process rights, contempt proceedings are either civil or criminal, depending on nature of proceedings and relief afforded. *Gates v. Municipal Court* (App. 4 Dist. 1992) 11 Cal.Rptr.2d 439, 9 Cal.App.4th 45, review denied. Constitutional Law Ⓒ273; Contempt Ⓒ40

Contempt charges brought against sheriff who violated state statute concerning pretrial release of arrestees in effort to comply with federal court order capping inmate population at county jail were criminal in nature where sheriff had revised policies allegedly violative of state statute more than eight months prior to filing of contempt charges, none of the contempt counts involved arrestees' release after revised procedures were effected, and presiding judge specifically rejected sheriff's purgation argument, reasoning that sheriff should be punished lest his promise not to repeat violation excuse past wrongful conduct. *Gates v. Municipal Court* (App. 4 Dist. 1992) 11 Cal.Rptr.2d 439, 9 Cal.App.4th 45, review denied. Contempt Ⓒ3

Pen.C. § 654 prohibiting multiple prosecution applies to the criminal contempt process and bars excessive criminal contempt actions arising out of the same indivisible course of conduct. *In re Farr* (App. 2 Dist. 1976) 134 Cal.Rptr. 595, 64 Cal.App.3d 605. Contempt Ⓒ38

If action in which person is subpoenaed as a witness is later terminated it would no longer be possible for person to testify therein or perform act he was previously ordered to

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perform and he could not be punished for a civil contempt, but court may impose punishment for criminal contempt committed therein if proper procedural safeguards are preserved and evidence is sufficient. *Morelli v. Superior Court of Los Angeles County* (1969) 82 Cal.Rptr. 375, 1 Cal.3d 328, 461 P.2d 655. Witnesses 21